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OFFICE OF
WORKERS' COMPENSATION JUDGE
HELENA, MONTANA

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IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,)	
Petitioner,)	
)	WCC No. 2002-0676
vs.)	
)	Petitioner's Motion to Compel
)	Discovery Responses From
MONTANA STATE FUND)	Millers First Insurance Company
Respondent/Insurer)	
)	

COMES NOW the petitioner, Dale Reesor ("Reesor"), to move the Court for an order compelling Millers First Insurance Company to respond more fully to discovery requests propounded on January 26, 2006. The attorney for Millers First Insurance Co. filed objections in the responses to these discovery requests on February 14, 2006 (attached hereto as Exhibit A).

Mr. Reesor is an injured worker who, because of an arbitrary age limitation, received a severely decreased PPD benefit pursuant to §39-71-710 MCA (1999). In an appeal to the Montana Supreme Court, Reesor successfully argued that there was no rational governmental interest served by denying equal PPD benefits to older workers. The Supreme Court found that §39-71-710 MCA (1999) contravened public policy, which requires PPD to "bear a reasonable relationship to actual wages lost." Reesor v. State Fund 103 P.3d 1019, 325 Mont. 1, 2004 MT 370.

The Supreme Court decided Reesor on December 22, 2004. Thereafter, Reesor was remanded back to this Court for further prosecution. Briefing on post-remand issues is scheduled for April 17, 2006. In the meantime, the Reesor claimants are proceeding with this common fund action.

Judge McCarter required service of process of the Reesor claim on all workers' compensation insurance companies that were licensed to provide workers'

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compensation insurance in Montana between July 1, 1987 and December 22, 2004. Based on information that Reesor received from the Workers' Compensation Court on April 4, 2006, the Court sent out 633 summonses to the Insurers identified by the Department of Labor. Of the 633 Insurers served, 292 insurance companies appeared; and of the 292 insurance companies that appeared, Reesor stipulated to the dismissal of 91 companies (which did not write insurance in Montana). That left 341 insurance companies that did not respond to the Court's summonses.

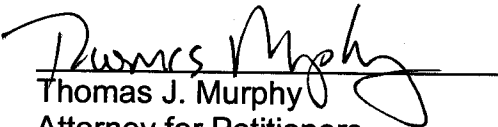
On December 6, 2005, this Court allowed Reesor to proceed against the party Insurers without requiring Reesor to renounce ("state that he will not pursue") future common fund actions against non-responsive Insurers. The Court agreed that it would not prejudice the parties, nor would it prejudice the non-responsive insurers, if the Court allowed the common fund case to proceed.

Therefore, on January 26, 2006, Reesor served the disputed discovery requests that are the subject of this motion. Millers First Insurance objected to all of the discovery requests on February 14, 2005. Millers First Insurance maintains that Reesor's discovery requests asked for information that was beyond the scope of discovery.

Reesor asks the Court to compel Millers First Insurance to answer the discovery requests propounded. As stated above, Reesor dismissed ninety-one (91) insurers that did not write workers' compensation insurance in Montana. Therefore, it is clear that Reesor does not intend to hold unrelated insurers in this action. However, Reesor must first be supplied with adequate proof that an insurer does not have viable claims.

In the instant case, Millers First Insurance filed an affidavit and motion to dismiss (Docket # 342) that maintained that Millers First Insurance "had no claimants meeting the Court's criteria in this matter..." In such an instance, the Workers' Compensation Court allows Reesor to discover how Millers First Insurance determined that there were "no claimants meeting the Court's criteria." Reesor's subject discovery requests are designed to obtain that information, but Millers First Insurance refuses to respond with any information. Therefore, this Court should compel Millers First Insurance to answer Reesor's discovery requests.


DATED this 4th day of April, 2006.


Thomas J. Murphy
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of April, 2006, a copy of the foregoing was served by mailing a true and correct copy of said document via first class mail to the attorneys at the address listed below:

Steven Jennings
Crowley, Haughey, Hansen Toole & Dietrich
P O Box 2529
Billings, MT 59103-0537
Attorney for Insurer/Respondent


Thomas J. Murphy

COPY

Steven W. Jennings
Crowley, Haughey, Hanson,
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(406) 252-3441
Attorneys for Millers First Insurance Company

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

DALE REESOR,

Petitioner,

vs.

MONTANA STATE FUND,

Respondent/Insurer.

WCC No. 2002-0676

MILLERS FIRST INSURANCE
COMPANY'S RESPONSE TO
PETITIONER'S DISCOVERY
REQUESTS TO MILLERS FIRST
INSURANCE COMPANY

COMES NOW Miller First Insurance Company and responds to *Petitioner's Discovery Requests to Millers First Insurance Company.*

INTERROGATORY NO. 1: Please identify all workers compensation policies issued in Montana by Millers First Insurance Company between 7/1//1987 and 12/22/2004, by stating the following for each policy:

- A. The name of the company insured;
- B. The length of time insured; and
- C. The policy number.

RESPONSE: Millers First Insurance Company objects to Interrogatory No. 1 on the grounds that it is overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks confidential and proprietary information, and that the information sought is available to Petitioner through other sources.

Furthermore, Millers First Insurance Company notes that, pursuant to this Court's Memo of December 6, 2005 (document No. WCC # 81 on this Court's *Schmill* web page), it completed and submitted the form affidavit required by this Court of all common fund respondents seeking dismissal. *Affidavit*, 1/18/06, (document No. WCC # 342 on this Court's *Reesor* web page). That affidavit contains a required acknowledgment that the affiant agrees to permit Petitioner to conduct discovery and

investigation for only the limited purpose of proving or disproving the statements of fact made within the affidavit. The affidavit submitted herein by Millers First Insurance Company made no averments of fact with respect to the information sought in Interrogatory No. 1. *Id.* Accordingly, Millers First Insurance Company objects to Interrogatory No. 1 on the basis that it seeks information beyond the scope of that necessary to prove or disprove statements of fact contained within the affidavit.

INTERROGATORY NO. 2: For all workers compensation benefits paid in Montana between 7/1/1987 and 12/22/2004, please state the following:

- A. list the type of benefit paid (TTD, PPD, Impairment, TPD, PTD or TRB);
- B. State the total amount of all payments in each claim;
- C. State the date of injury; and
- D. State the date of birth of the claimant.

RESPONSE: Millers First Insurance Company objects to Interrogatory No. 2 on the grounds that it is overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks confidential and proprietary information, and that the information sought is available to Petitioner through other sources.

Furthermore, Millers First Insurance Company notes that, pursuant to this Court's Memo of December 6, 2005 (document No. WCC # 81 on this Court's *Schmill* web page), it completed and submitted the form affidavit required by this Court of all common fund respondents seeking dismissal. *Affidavit*, 1/18/06, (document No. WCC # 342 on this Court's *Reesor* web page). That affidavit contains a required acknowledgment that the affiant agrees to permit Petitioner to conduct discovery and investigation for only the limited purpose of proving or disproving the statements of fact made within the affidavit. The affidavit submitted herein by Millers First Insurance Company made no averments of fact with respect to the information sought in Interrogatory No. 2. *Id.* Accordingly, Millers First Insurance Company objects to Interrogatory No. 2 on the basis that it seeks information beyond the scope of that necessary to prove or disprove statements of fact contained within the affidavit.

INTERROGATORY NO. 3: Please identify the number of claims filed in Montana, which involved injured workers age 65 (either at the time of injury or at the time of maximum medical improvement) under all policies issued by Millers First Insurance Company between 7/1/1987 and 12/22/2004

RESPONSE: Millers First Insurance Company objects to Interrogatory No. 3 on the grounds that it is overbroad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks confidential and proprietary information, and that the information sought is available to Petitioner through other sources.

Furthermore, Millers First Insurance Company notes that, pursuant to this Court's Memo of December 6, 2005 (document No. WCC # 81 on this Court's *Schmill* web page), it completed and submitted the form affidavit required by this Court of all common fund respondents seeking dismissal. *Affidavit*, 1/18/06, (document No. WCC

342 on this Court's *Reesor* web page). That affidavit contains a required acknowledgment that the affiant agrees to permit Petitioner to conduct discovery and investigation for only the limited purpose of proving or disproving the statements of fact made within the affidavit. The affidavit submitted herein by Millers First Insurance Company made no averments of fact with respect to the information sought in Interrogatory No. 3. *Id.* Accordingly, Millers First Insurance Company objects to Interrogatory No. 3 on the basis that it seeks information beyond the scope of that necessary to prove or disprove statements of fact contained within the affidavit.

INTERROGATORY NO. 4: Please describe the procedure that Millers First Insurance Company used to determine that it had no relevant *Reesor* claims in Montana.

RESPONSE: The methodology that Millers First Insurance Company used to determine that it had no *Reesor*-type liability was as follows: Millers first Insurance Company was licensed in Montana in 1986. In order to identify claims fitting the criteria set forth in this Court's *Summons* of April 22, 2005 (document No. 36 on this Court's *Reesor* web page), Millers First Insurance Company used reports from its computerized policy and claims processing systems to identify Montana workers compensation paid losses from 1986 to 2005. This search included reports from our State 2 Financials, listings of workers' compensation claims with an accident in the State of Montana, policy listing for policyholders with an address in Montana, and a policy listing of policies with a location or site in Montana. Millers First Insurance Company then did a manual search against each policy to verify whether a claim was reported. The manual search revealed no claims fitting the description provided in the aforementioned *Summons*. Specifically, the manual search revealed that Millers First Insurance Company had no claims in Montana in which permanent partial disability benefits were terminated upon a claimant's eligibility for Social Security Retirement benefits.

Dated this 14th day of February, 2006.

CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.

By: 

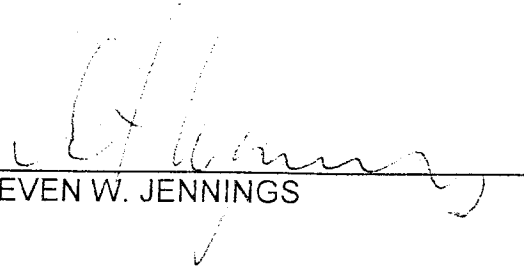
STEVEN W. JENNINGS

Attorneys for Millers First Insurance Company

CERTIFICATE OF SERVICE

I, STEVEN W. JENNINGS, one of the attorneys for the law firm of Crowley, Haughey, Hanson, Toole & Dietrich P.L.L.P., hereby certify that on the 14th day of February, 2006, I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

Mr. Thomas J. Murphy
Murphy Law Firm
PO Box 3226
Great Falls, MT 59403-3226



STEVEN W. JENNINGS